S.B. Civil Writ Petition No. 2530/2003
(Dhanna and Anr. V/s The Board of Revenue)

Date of Order : 2/12/2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.J.R. Beniwal, for the petitioner/s
Mr.Shyam Ladrecha, Addl. Govt. Advocate

Heard learned counsel for the parties.

Brief facts of the case are that the plaintiffs-petitioners filed a suit for declaration and injunction before the Court of Assistant Collector, Pali on 26.12.1975 and claimed that the land of Khasara No.631 measuring 125 Bighas situated in Village Bhanwari Jagir was gifted to the plaintiffs by the erstwhile jagirdar and they continued in possession from Samwat year 2009. However, no entries were made in the name of the plaintiffs-petitioners but by virtue of Section 15 of the Rajasthan Tenancy Act, 1955, by operation of law, the plaintiffs-petitioners became khatedar tenants of the land in dispute. The patwari of the area threatened to dispossess the petitioner on 30.12.1975 on the ground that the land has been surrendered by the erstwhile Jagirdar in his ceiling case therefore, the Patwari is entitled to take possession of the land in question, therefore, the plaintiffs filed a suit for declaration of their khatedari rights of the land in question. The suit of the plaintiffs was dismissed by the

learned Assistant Collector, Head Quarter, Pali vide judgment and decree dated 11.10.1989. The petitioners being aggrieved against the judgment of the trial court, preferred the regular first appeal before the Revenue Appellate Authority, Pali, which was allowed by the judgment and decree dated 15.3.1997. The State being aggrieved against the said judgment and decree of the First Appellate Court preferred Second Appeal before the Board of Revenue, beingAppeal Decree No. 156/97/TA/Pali. It appears from the judgment of the Board of Revenue dated 30.12.2002 which is impugned in this writ petition that some allottes of the land also preferred appeal against the judgment of the Revenue Appellate Authority dated 15.3.1997. Both appeals were decided by the learned Board of Revenue vide common judgment dated 30.12.2002. The Board of Revenue allowed the appeal of the State Government and set-aside the judgment and decree of the First Appellate Court dated 15.3.1997 and upheld the judgment of the Court of Assistant Collector, Head Quarter, Pali dated 11.10.1989. Meaning thereby the suit of the plaintiffs-petitioners stands dismissed.

Being aggrieved against the judgment of the Board of Revenue, the petitioners preferred this writ petition.

According to the learned counsel for the

petitioners, the Board of Revenue has committed serious error of law as the Board of Revenue has not decided the appeal by deciding all the issues and has further committed serious error of law in deciding the appeal without considering the evidence of the plaintiffs by proper appreciation.

It appears from the facts and circumstances of the case that ceiling proceedings were initiated against the original defendant Thakur Kishore Singh and that went against him. He surrendered the land in question in ceiling proceedings. The plaintiffs – petitioners' case is that they filed the suit because Patwari concerned initiated proceedings for taking the land. It appears from the entire record that the plaintiffs could not produce any revenue record showing the entry of his name in support of his claim that he was in possession since 2009 and thereafter despite the fact that the case of the plaintiff is that he got the land from the erstwhile Jagirdar in the year 2009. The erstwhile Jagirdar, who had good relation with the plaintiffs was party in the ceiling proceedings and it appears that when the matter went against the erstwhile Jagirdar, the plaintiffs filed the suit to protect the land which was recorded in the name of erstwhile Jagirdar.

When there is no proof of possession on the

land of the plaintiffs then the Second Appellate Court was fully justified in reversing the judgment of the First Appellate Court.

In view of the above facts, I do not find any merit in the contentions submitted by the learned counsel for the petitioner framed on the ground of technicalities of law of not deciding the Second Appeal issue-wise.

Learned counsel for the appellants vehemently submitted that in view of the specific fact recored in the judgment of the Board of Revenue that the plaintiffs produced the Khasara Girdhawari of Samwat Year 2030-2031 which shows the petitioners-plaintiffs were in possession in the year 2030-2031, therefore, this land was encumbered and the defendant could not have surrendered the said land because it was encumbered land. The arguments of the learned counsel for the appellants is devoid of any force simply because of the reason that Khasara Girdhawari of two years i.e. of the year 2030-2031 itself cannot be a proof of the exclusive possession. If with the consent of the original defendant, who was facing the ceiling proceeding against him the plaintiffs got the possession of the land after several years of alleged gift made in his favour, it cannot be a proof of actual physical possession giving title to the

petitioners.

In view thereof, the writ petition of the petitioner is dismissed.

(PRAKASH TATIA)J.

RM/